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C O N F I D E N T I A L SECTION 01 OF 04 PRISTINA 000431

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KV, YI

SUBJECT: KOSOVO: THE WAY FORWARD ON TRANSITION TO KOSOVO'S  
OWN PRIVATIZATION AGENCY

Classified By: CHARGE D'AFFAIRES TOM YAZDGERDI FOR REASONS 1.4 (B) AND  
(D)

¶1. (C) SUMMARY: Kosovo's privatization process, once highlighted as an UNMIK economic success story, has ground to a halt. Nearly two months after the country's new Privatization Agency of Kosovo (PAK) was to assume the work of the Kosovo Trust Agency (KTA), an UNMIK entity, UNMIK still does not recognize the authority of PAK, and all privatization work has ceased. KTA employees, many of whom will work in the PAK, had a detailed transition plan ready, but the plan was never implemented, and KTA employees left work on June 30, when UNMIK Pillar IV ceased its activities. The former KTA premises have been locked, and PAK is unable to re-start the privatization process without access to the archives. Investors who have made downpayments on privatized properties prior to June have not been able to conclude contracts on these purchases. Thousands of privatization-related claims are waiting to be reviewed by the courts and worker compensation payments stemming from privatized properties are yet to be disbursed.

¶2. (C) SUMMARY (cont'd): As the way forward, former UNMIK Pillar IV head/former KTA Board Chairman Paul Acda (protect) outlined to us recently a highly-orchestrated plan of action to allow the PAK Board o/a August 29 to unilaterally assume privatization responsibilities, thereby releasing UNMIK from pressure to hand over competencies to what it regards as a non-status neutral entity. We have also coordinated with the International Civilian Office (ICO), which plays a key role on the PAK's Board and which agrees with this course of action. Acda and UNMIK Senior Legal Adviser Ernst Tschoepke (protect) have assured us that UNMIK will "look the other way" when PAK asserts this control, including its takeover of KTA facilities, since UNMIK "has no interest" in remaining in the privatization business in Kosovo. Acda also told us that DPKO will not react, asserting that DPKO European Chief David Harland told him as much in a recent conversation. At an August 18 meeting with Charge, SRSZ Zannier confirmed the above, and said that UNMIK has nothing to administer anymore, since KTA "evaporated" with the June 30 closing of UNMIK Pillar IV. Given these assurances, we are confident that this plan will work and in any case see no alternative to

re-start Kosovo's privatization process and allow the PAK to do its work. END SUMMARY.

¶3. (SBU) When Kosovo's constitution entered into force on June 15, two key pieces of legislation were passed by the Kosovo Assembly to pave the way for KTA to become PAK. The Law on Public Enterprises transferred administration of publicly-owned enterprises (POEs), such as Post-Telecom Kosovo (PTK) and Pristina International Airport, to the Ministry of Economy and Finance (MEF), with input from relevant line ministries. The second piece of legislation authorized establishment of the Privatization Agency of Kosovo (PAK), and granted it all of the KTA's assets and liabilities. More than a month after this legislation passed, the new agency has yet to begin operations and continue with the privatization of the remaining socially-owned enterprises (SOEs), because UNMIK has not recognized its authority.

¶4. (SBU) When privatization in Kosovo began, it was one of UNMIK's most challenging issues to tackle due to the legal complexities involved, including ownership claims from Serbia, and UNMIK's inexperience with administering such a process. KTA was established in 2002, but by 2005, after two rounds of auctions, just 15 SOEs had been sold. The privatization process began in earnest in mid-2005, after UNMIK strengthened KTA's legal authority. The arrival of then Pillar IV Head Joachim Ruecker also pushed things forward by taking on a stronger leadership role. One year after Ruecker's arrival, 140 SOEs had been auctioned; the year after that, 312 SOEs were tendered.

PRISTINA 00000431 002 OF 004

#### Privatization Work Stopped, Despite Transition Plan

¶5. (SBU) According to Shkumbim Bicaj, former KTA Deputy Managing Director of Privatization, approximately 100 SOEs are still waiting to be privatized. However, as of June 30, KTA closed its doors and all privatization work ceased. According to a presentation given by the American Chamber of Commerce in Kosovo on July 24, contracts for 78 previously tendered SOEs are still waiting to be finalized, as well as 70 liquidation contracts. These contracts represent anywhere from 36 to 50 million euros in deposits from investors who are now waiting in legal limbo to acquire control over their purchases. There is no one the investors can contact about their current situation because the KTA offices are closed, and there is no contact information listed for PAK. The Kosovo Special Chamber (of the Supreme Court, established specifically to adjudicate claims related to the privatization process) and municipal courts are also stalled on privatization-related claims. According to Bicaj, over 4,000 privatization-related claims are waiting to be reviewed by the courts, and 55 million euros in former SOE workers, compensation payments are waiting to be processed and disbursed.

¶6. (SBU) In March 2008, KTA employees had already developed a detailed transition plan in anticipation of the transition to PAK, said Bicaj. The plan included tracking necessary legislation to establish PAK as a legal entity, provided an estimated salary budget for professional and legal staff, and envisioned closing the doors of KTA on June 30 as part of the EU Pillar IV closedown, and re-opening as PAK on July 1. These plans were never implemented. Instead, KTA closed on June 30 leaving the employees not knowing if they would have a job the next day, or at any point in the future. The Managing Director of the KTA departed Kosovo without providing an explanation of the situation or UNMIK's position. The KTA premises and archives remain locked and guarded per UNMIK instruction, and new SRSG Zannier issued an Executive Directive on July 29 that froze all activities of the KTA until such as when the organization becomes operative again.

## The Way Forward

¶17. (C) On August 11, USEP met with former Pillar IV Head/former KTA Board Chairman Paul Acda (protect) to discuss possible ways to break through the current KTA-PAK stalemate.

Acda explained that since the Ahtisaari Plan was not agreed to by the UN Security Council, which would have initiated the handover process, UNMIK cannot be seen as relinquishing authority to a non-status neutral entity. However, he did outline several concrete steps the PAK Board could take to constitute its authority and unilaterally assume KTA responsibilities from UNMIK. First, he noted, the PAK Board Chairman must convene an official meeting in compliance with the Law on the Privatization Agency of Kosovo as soon as possible. Although the Board has already met informally, Acda said that PAK cannot become a fully legal entity until the Board officially meets, appoints necessary officers, and legally constitutes itself. Acda then recommended that the PAK Board Chairman write a letter to the SRSG with a copy to Acda stating that under Kosovo law, PAK is the legal successor to the KTA and will access the former KTA records, buildings, and the privatization trust fund, all in the name of continuing the economic reconstruction of Kosovo. Acda pointed out that the equipment within the KTA compound actually belongs to Pillar IV, but will be donated to PAK as part of the Pillar IV liquidation process. He noted that through a grant agreement signed on June 30, this will be a straight transfer of assets between the EU (former Pillar IV sponsor) and the EC (current PAK sponsor).

¶18. (C) Acda continued that since UNMIK would not be in a position to simply "hand over" these resources, the PAK Board

PRISTINA 00000431 003 OF 004

Chairman would have to obtain physical access to the KTA compound on his own. If PAK even went as far as to cut the lock to the compound in order to access the buildings, Acda asserted that UNMIK would "look the other way" and instruct the private security company guarding the premises not to resist. UNMIK senior legal advisor Ernst Tschoepke (protect) re-affirmed Acda's suggested steps in a separate conversation on August 14, and said that the KTA-to-PAK transition really could not happen any other way. According to Tschoepke, Kosovo needs to "cut the lock" to the KTA compound and start working, but even more critically, the PAK Board must officially convene and begin making executive decisions.

¶19. (C) When asked what the reaction of DPKO might be to such actions, Tschoepke said there would be none, since UNMIK has no enforcement authority, just instructions to "react to events on the ground." Acda told USEP on August 15 that DPKO Europe Head David Harland, a month ago, said that actions by PAK to unilaterally assume privatization authorities would be accepted as a "fait accompli." Acda foresaw no reaction from the SRSG because the "UN wants this to happen." Acda admitted there might be some reaction to PAK's request to access the privatization trust fund, in anticipation of Belgrade's previously voiced concerns over possible abuse of these funds. (Note: This 430 million euro privatization trust fund was frozen per UNMIK Executive Directive on July ¶14. End Note.). However, Acda noted that the Law on the Privatization Agency of Kosovo imposes even more restrictive measures than the previous law on how these funds can be used, and also empowers the International Civilian Office (ICO) to ensure the funds are not used for purposes other than those related to privatization. (Note: The law specifically requires the signatures of all three international PAK Board members to disburse funds from this fund. These funds are critical for continuing the privatization process, for paying creditors, and ensuring minorities are receiving appropriate compensation payments from privatization. A substantial portion of these remuneration payments will be received by Kosovo Serbs. End Note.)

¶10. (C) In an August 18 meeting with Charge, SRSG Zannier

confirmed that he would not react to this course of action, nor did he believe DPKO would do so. He said that his authority over KTA "evaporated" when Pillar IV ceased its operations on June 30. If asked by the media, Zannier said he would take this line and emphasize that he has no authority to oppose such an action. (In general, he asserted that while he could not support the assertion of Kosovar authority, neither could he oppose it.) The strong impression coming from Zannier was to quietly move ahead with the plan.

PAK will access KTA premises/archives on or about August 29

¶11. (C) In a meeting with ICO on August 14, including one ICO member who sits on the PAK Board, a tentative plan of action was outlined per this unofficial guidance received from UNMIK, as follows:

-- The PAK Board will officially convene on August 26 at ICO, formally establishing itself as the body's representative authority, and will appoint key personnel. The Board will meet again on August 27 to officially adopt PAK policies, as outlined under Kosovo law.

-- On August 28, the PAK Board Chairman will send a letter to SRSG Zannier, with a copy to Acda, stating that according to Kosovo law, UNMIK is being given notice that the PAK will access the former KTA premises.

-- On a date pre-arranged with UNMIK, most likely on or about August 29, PAK will access the KTA compound. When the PAK Board Chairman approaches the compound with a copy of the letter to the SRSG, the security company will have been

PRISTINA 00000431 004 OF 004

instructed to call Acda, informing him that PAK is attempting to access the compound. Acda will then tell the security company to step aside, avoiding any conflict, and allow PAK to enter the premises. There is to be no media present. The PAK Board Chairman will also send a letter to Acda requesting a donation of the former KTA equipment, as well as access to the privatization archives. The PAK Board will then issue a media release the following week, detailing the decisions of the two PAK Board meetings.

¶12. (C) COMMENT: Without the ability of UNMIK to recognize the PAK as the KTA successor agency, all business related to privatization has come to an abrupt halt. Kosovo has been left with two non-functioning privatization agencies under two different authorities, and thousands of individuals await resolution of their cases. With this plan of action, endorsed by key UNMIK officials, PAK should be able to unilaterally assume legal authority to resume privatization activities. Of course, there is no guarantee that this sequence of events will come to pass exactly as proposed, nor do we know for certain the reaction of DPKO or Belgrade. However, based on consultations with key players, we believe this approach will succeed without undue risk. No other stakeholder has been able to identify an alternative that is even remotely more promising for getting around the current impasse. Further delay in this process will only damage Kosovo's continued economic reconstruction, the credibility of the new privatization agency, and the ability of the Kosovo government to deliver on its promises to workers and minority communities.

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